



MD 01-1407 #1298

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY *[Signature]* DEPUTY

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AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE Phenylpropanolamine (PPA) Products )  
Liability Litigation )

No MDL 1407

CASE MANAGEMENT ORDER #12  
REGARDING EXPERT DEPOSITION  
DISCOVERY

-----  
This document relates to all actions

As previously ordered, expert discovery concerning "generic" or general causation and liability issues of widespread applicability will take place within this MDL proceeding. The following procedures shall apply to this expert discovery.

I

EXPERT DISCLOSURES

Expert disclosures shall be made by the parties on the dates previously ordered by the Court. Each party's expert disclosures shall be made in accordance with Fed. R. Civ. P., Rule 26.

II

EXPERT DEPOSITIONS

All expert depositions shall be conducted pursuant to applicable Federal Rules of Civil Procedure and Local Rules of the United States District Court for the Western District of Washington, and as further specified below.

CASE MANAGEMENT ORDER REGARDING EXPERT  
DEPOSITION DISCOVERY - 1

Case No. MDL 1407  
019186 0028/970876 1

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE, WA 98101  
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ORIGINAL

1298

cc: counsel, BJK

1     A     Deposition Notices

2             In addition to the information required by the applicable Rules, each deposition notice  
3 shall include the name, if known, of the primary examiner(s) designated by the party noticing  
4 the deposition, and the date, time and place of the deposition. In order for noticing counsel to  
5 make arrangements for adequate deposition space, counsel who intend to attend the  
6 deposition of an expert noticed in MDL 1407 should provide notice to the individual counsel  
7 signing the Notice of Deposition. Deposition notices shall state whether the deposition is to  
8 be videotaped and, if so, the name, firm and address of the videotape recorders. Service of  
9 the deposition notice of any expert shall be made upon the counsel for the party or parties  
10 proffering the expert, not the expert witness personally.

11     B     Cross-Notices in State Court Cases and These Proceedings

12             To avoid duplicative expert discovery and to prevent the unnecessary expenditure of  
13 judicial and party resources, the parties may cross-notice the deposition of an expert noticed  
14 in MDL 1407 in any state court proceedings where the expert has been designated as an  
15 expert. Similarly, the parties may cross-notice the deposition of any expert designated in a  
16 state court proceeding in this MDL where the same expert has been designated in both  
17 proceedings. Any motion to quash or stay any such cross-notice filed in the MDL must be  
18 filed greater than ten (10) days prior to the scheduled date of the cross-noticed deposition.  
19 The filing of any such motion will not delay the cross-noticed deposition, unless otherwise  
20 ordered by the Court. If a deposition is cross-noticed, counsel designated in the original  
21 notice of deposition shall conduct the initial phase of the deposition. Nothing in this provision  
22 shall be construed as an injunctive or equitable order affecting state court proceedings.  
23 Rather, this provision is intended to reflect this Court's desire for voluntary state-federal  
24 coordination.

1 C Scheduling

2 Counsel proffering any experts shall provide to opposing Liaison Counsel the name of  
3 an attorney to act as a contact person for each expert regarding the scheduling of depositions  
4 and other matters specific to that expert in the MDL. Depositions of expert witnesses may  
5 commence after disclosures are made and, unless otherwise agreed to by the parties, shall be  
6 completed within the time frame ordered by the Court. To the extent practicable, counsel  
7 shall consult with opposing counsel in an effort to schedule depositions at times convenient to  
8 the expert witness and the parties. The Court will resolve any deposition scheduling issues  
9 that Lead Counsel or their designees are unable to resolve.

10 D Length of Examination in Expert Depositions

11 The deposition of an expert in the MDL shall not exceed a total of seven (7) hours of  
12 actual examination time by parties against whose interests the opinion(s) of the expert may be  
13 offered absent agreement or further order of the Court upon a showing of good cause. The  
14 Court expects that if a deposition requires additional time, the parties will make a good faith  
15 effort to agree on an extension before coming to the Court for resolution. Additional time  
16 beyond the time provided to MDL counsel shall be provided for questioning on case-specific  
17 issues where the identified expert has named as an expert in a pending state action at a time  
18 and place to be determined by agreement of the parties to the state action or by order of the  
19 applicable state court.

20 E Location of Depositions

21 Unless otherwise agreed to, all depositions of experts shall take place within the  
22 federal district in which that expert resides or works.

23 F Further Depositions

24 No further deposition of an expert designated on issues of widespread applicability in  
25 this MDL proceeding shall be permitted except as set forth in this paragraph.

1           1       Any party to these MDL proceedings who did not have reasonable notice of an  
2 expert deposition and who was not present or whose position was not adequately represented  
3 at the expert deposition (including parties later added and parties in cases subsequently filed  
4 in, removed to, or transferred to this Court) may, within thirty (30) days after filing of the  
5 deposition (or, if later, within sixty (60) days after becoming a party in any action which  
6 docketed in this Court), file a motion to conduct a further deposition of the deponent upon a  
7 showing of good cause. Within ten (10) days of the filing of any such motion, any party may  
8 file an opposition to the motion and seek a protective order prohibiting the further deposition  
9 on the grounds that the completed deposition fully covered the area or areas sought to be  
10 explored in the further deposition or that the testimony sought is not relevant. If a further  
11 deposition is permitted by the Court or unopposed, it shall be treated as the resumption of the  
12 deposition originally noticed. During the resumed deposition, the prohibitions regarding  
13 redundant or repetitive examination contained in CMO No 1 are fully applicable. The  
14 resumed deposition shall be taken at the same location as the initial deposition unless  
15 otherwise agreed to by the parties and the deponent.

16           2       The party proffering an expert will be permitted to conduct a preservation  
17 deposition of the expert either by agreement of the parties or by a showing that the following  
18 conditions have been met:

19                   (a)     that the trial or hearing for which the testimony is being preserved has  
20 actually been scheduled,

21                   (b)     that the expert whose testimony is being preserved has been designated  
22 as a testifying expert in the case, and

23                   (c)     that the expert whose testimony is being preserved has indicated that he  
24 may not appear to testify in person at trial or at hearing.

25 Unless otherwise ordered by the Court, notice of any preservation deposition shall be served  
26 on Plaintiffs' and Defendants' Liaison Counsel more than 14 days before the deposition date,

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DEPOSITION DISCOVERY - 4

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1 and any objection thereto shall be filed within seven days of the deposition date. The  
2 opposing party may in its objections raise any objection to the taking or the timing of the  
3 preservation deposition. At any preservation deposition noticed pursuant to this provision,  
4 reasonable time shall be provided to the opposing party to conduct cross-examination of the  
5 expert witness. The parties will cooperate in seeking an immediate court resolution to any  
6 dispute regarding the taking or timing of a preservation deposition.

7 **G Other Matters**

8 The parties shall otherwise continue to abide by the remaining provisions in CMO  
9 No. 1 pertaining to depositions of witnesses that are not inconsistent with this Case  
10 Management Order. Each party shall bear the expenses, fees or other charges of its own  
11 expert incurred in connection with the expert's deposition.

12 **III**

13 **PRODUCTION OF DOCUMENTS**

14 As previously agreed to by the parties, each expert witness noticed to be deposed shall  
15 produce to the party noticing the deposition all materials described in Attachment A, as that  
16 Attachment was interpreted by the Court during the course of the October 31, 2002 status  
17 conference ("Responsive Documents"), except that the expert need only produce a listing of  
18 those materials that are publicly available or have already been produced during the course of  
19 these proceedings. If a document would otherwise be a Responsive Document, it shall be  
20 produced whether the document is currently in the possession of the expert or of any attorney  
21 for the party proffering the expert. Provided, however, nothing in this provision shall require  
22 the production of documents in the sole possession of the attorneys that have not been  
23 provided to, shown to, prepared by or otherwise considered by the expert witness. The  
24 Responsive Documents or copies thereof and any listing shall be produced on or before seven  
25 (7) days prior to the date the expert's deposition is to commence, and the party proffering the  
26 expert shall cooperate in providing copies of any document listed which is not reasonably

CASE MANAGEMENT ORDER REGARDING EXPERT  
DEPOSITION DISCOVERY - 5

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1 obtainable by the party noticing the deposition Any outstanding subpoena duces tecum  
2 served on any expert prior to the date hereof is hereby deemed withdrawn This provision  
3 shall not apply to depositions taken pursuant to paragraph II(F)(2) above

4 RESPECTFULLY SUBMITTED this 13 day of December, 2002

5 LANE POWELL SPEARS LUBERSKY LLP

6  
7 By D. Joseph Hurson  
8 D Joseph Hurson  
9 WSBA No 09296  
10 *Co-Liaison Counsel for the PPA*  
11 *Manufacturer-Defendants*

12 Of Counsel

13 KAYE SCHOLER LLP

14 Randolph S Sherman  
15 Lori Leskin  
16 425 Park Avenue  
17 New York, New York 10022  
18 Telephone 212-836-8000  
19 Facsimile 212-836-8689

20 *Counsel for Novartis Consumer Health, Inc ,*

21 DATED at Seattle, Washington this 20th day of December, 2002.

22 Barbara Jacobs Rothstein  
23 BARBARA JACOBS ROTHSTEIN  
24 UNITED STATES DISTRICT JUDGE  
25  
26

CASE MANAGEMENT ORDER REGARDING EXPERT  
DEPOSITION DISCOVERY - 6

Case No MDL 1407

019186 0028/970876 1

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## Exhibit A

The term "documents" is used in its broadest sense, and includes, without limitation, written material of whatever kind or nature, whether typed, printed, handwritten or otherwise produced including, without limitation, letters, memoranda, notes, contracts, bills, invoices, spreadsheets, photographs, calendars, photostats, photocopies, data, audio or video recordings, and electronic data compilations, including computerized files, computer disks, hard drives, database records, "voice mail" or "phone mail" recordings, and "electronic mail" or "e-mail" messages, however stored, as well as drafts, revisions, and redline versions or iterations, whether paper or electronic. Spreadsheets and any other documents that contain formulas and/or calculations are to be produced in readable electronic format and in such a way that the formulas and/or calculations may be reviewed.

Further, the "documents" requested herein extend to and include any and all such materials within the possession, custody, or control of the experts' agents, attorneys, or representatives, regardless of where located. Experts are to produce the materials in their possession, custody, or control listed below:

1. Current curriculum vitae.
2. All documents and materials, published or unpublished, on which the experts intend to rely as a basis, in whole or in part, for the opinions they intend to express in this litigation
3. All materials and documents obtained, received, reviewed, considered, or consulted by the experts in connection with their testimony in this litigation, whether they found the matter contained in these documents or materials to be helpful or not. The documents and materials requested include, but are not limited to, all records, data, depositions, statements, transcripts, medicals, articles, books, and correspondence
4. All documents, including but not limited to, notes, data, spreadsheets, reports, draft reports, interim iterations of reports, records, and computer disks, prepared or otherwise recorded by the experts, or at their direction, concerning or relating to their testimony in this litigation. The documents requested include, but are not limited to, all such documents relating to their review of documents, and those relating to the formulation of their opinions in this litigation

- 5 All articles or papers the experts have written, presented, or have participated in writing or presenting, that relate to or concern the subject matter of their testimony in this litigation.
6. All documents concerning any research that the experts have undertaken that relates to or concerns the subject matter of their testimony in this litigation, whether they found the research to be helpful or not.
- 7 All documents, data, or other materials supplied to the experts by the plaintiffs or their attorneys in this litigation.
- 8 All correspondence or other documents reflecting communications with anyone regarding the experts' testimony in this litigation or its subject matter, including but not limited to, e-mail correspondence.
9. All writings, notes, or other tangible evidence concerning conversations that the experts have had with anyone concerning or relating to their testimony in this litigation.
10. All photographs which the experts have reviewed concerning or relating to their testimony in this litigation.
11. Copies of all affidavits, reports, and sworn testimony given by the experts, whether at deposition or trial or otherwise, that relate to or concern the subject matter of their testimony in this litigation.
- 12 All reports, draft reports, iterations of reports, inserts to reports, red-lined versions of reports, and/or modifications or supplements to reports prepared by or provided to the expert.

THE HONORABLE BARBARA J ROTHSTEIN

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IN RE Phenylpropanolamine (PPA) Products )  
Liability Litigation )

No. MDL 1407

----- )  
This document relates to all actions )

**CERTIFICATE OF SERVICE**

I, Barbara LaBelle, hereby certify and declare under penalty of perjury as follows:

I am a citizen of the United States and a resident of King County, Washington. I am over the age of 18 years and am not a party to the within cause. My business mailing address is 1420 Fifth Avenue, Suite 4100, Seattle, WA 98101.

On December 16, 2002, I caused to be delivered a copy of

- 1 Letter to Honorable Barbara Jacobs Rothstein;
- 2 Case Management Order Regarding Expert Deposition Discovery, and
- 3 Certificate of Service

upon the following

CERTIFICATE OF SERVICE - 1

**COPY**

019186 0028/975435 1

LANE POWELL SPEARS LUBERSKY LLP  
SUITE 4100  
1420 FIFTH AVENUE  
SEATTLE, WA 98101  
(206) 223-7000

1 Via Hand Delivery

2 Honorable Barbara Jacobs Rothstein  
3 U S District Court  
4 Western District of Washington  
5 1010 Fifth Avenue  
6 Seattle, WA 98104

7  
8 Lance Palmer  
9 Levinson Friedman  
10 720 3<sup>rd</sup> Ave, Suite 1800  
11 Seattle, WA 98104

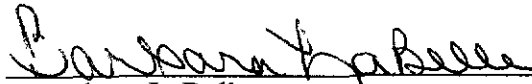
12 Via Electronic Mail

13 Arthur Sherman  
14 Sherman Salkow Petoyan & Weber

15 Richard S. Lewis  
16 Cohen Milstein Hausfeld & Toll

17 All Defense Counsel via Electronic Mail

18 Signed and dated this 16th day of December 2002, in Seattle, Washington

19  
20   
21 Barbara LaBelle

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

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Phenylpropanolamine,  
Plaintiff,  
vs.

Defendant.

Case No. 2 01-md-01407

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Document number 1298 was scanned and saved on the court's file server

By:  
Deputy Clerk

DATE: December 23, 2002